HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 164 of 2002 (S/S)
(Old Number 35595 of 1995)

AMAR SINGH
vs.
D.I.O. Almora and others.

~~Approved for reporting.~~

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~~Not approved for reporting~~

Date of decision 13/07/2005

Initial of Judge

IN THE HIGH CORUT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 164 (S/S) OF 2002
(Old Number 35595 of 1995)

Amar Singh, son of Kisan Singh,
R/o Khalyo, Post Barangal,
District Almora. .....Petitioner.

Versus

1. Deputy Inspector of Schools, Almora.
2. Principal, Rajkiya Uchchattar Madhyamik Vidyalaya, Nanla, Almora. .....Respondents.

Dated: July 13, 2005

Sri C.K. Sharma, learned counsel for the petitioner.
Learned Standing Counsel.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondent no. 2 to reinstate the petitioner in service on the post of Daftary and further to regularized his service on the post of Daftari.

Briefly stated, the petitioner was appointed on the post of IVth Class employee against a clearly vacancy on temporary basis on 16.02.1991 by the Deputy Inspector of Schools, Almora, Respondent No.1, when one Kunwar Singh Mehta, who was working as Daftari was promoted to the post of Clerk.

On 14.08.1995, the services of the petitioner were terminated without showing any reason.

Learned counsel for the petitioner has submitted that Sri Kunwar Singh Mehta, who was promoted to the Post of Clerk, his services has been regularized and he has been transferred from R.U.M.V. Nanla, Almora to Rajkiya Uchchattara Madhyamik Vidyalaya, Raigal on 30.06.1994 and because of his transfer the post of Daftari has become vacant in the office of

respondent no.2 but the services of petitioner has illegally been terminated.

Learned counsel for the petitioner has further submitted that on the post of Daftary in the office of respondent no. 2 no one has been appointed by the respondent no.1 till today.

Petitioner made a representation on 23.09.1995 to the Deputy Inspector of Schools, Almora, respondent no.1 but the same has not yet been decided.

Learned counsel for the petitioner has further submitted that the petitioner has worked more than four years in the office of respondent no.2 and post is still existing, therefore, the petitioner is entitled for the regularization on the post of Daftary.

Respondents have filed counter affidavit and have denied all the allegations raised by the petitioner and have stated in the counter affidavit that the petitioner is not entitled for any relief and the grounds taken by the petitioner have no force.

In paragraph 3 and 5 of the counter affidavit, it has been submitted as under:-

"यह कि उपरोक्त महेष सिंह पारिचालक के स्थानापन्न पद पर कार्यरत होने के कारण परिचालक का पद रिक्त हो जाने के कारण दिनांक 25–2–91 से पूर्णरूपेण अस्थायी तौर पर कनिष्ठ लिपिक के आ जाने तक ही मात्र कार्य करने का आदेष पारित किया गया था। और याची की नियुक्ति पूर्णरूपेण अस्थायी तौर पर उपरोक्त वर्णित शर्तो के तहत की गयी, जो कनिष्ठ लिपिक श्री चन्द्र सिंह रावत द्वारा कनिष्ठ लिपिक के पद पर दिनांक 14–8–95 को कार्यभार ग्रहण करने पर महेश सिंह पुनः अपने परिचारक के पद पर आ गए। जिस कारण याची की सेवाएं उसी तिथि से नियुक्ति पत्र दिनांक 16–2–91 के तहत नियमतः समाप्त हो गयी।"

".....वास्तविकता यह है कि याची मात्र अस्थायी तौर पर श्री महेष सिंह के स्थान पर स्थानापन्न रूप में किसी कनिष्ठ लिपिक के आ जाने तक ही कार्य सम्पादन करने हेतु आदेषित किया गया था तथा याची का यह कहना कि कुंवर सिंह मेहता दफ्तरी के कनिष्ठ लिपिक पद पर प्रोन्नति के फलस्वरूप हुए रिक्त पद पर याची की नियुक्ति की गयी थी, पूर्णतः असत्य है। चूंकि दफ्तरी कक्षा 8 उत्तीर्ण था जो कि लिपिक पद प्रोन्नति हेतु योग्य नहीं

था, इसलिए कुंवर सिंह मेहता की लिपिक पद पर प्रोन्नति सम्भव नही है।"

In reply of the counter affidavit, the petitioner has filed Rejoinder Affidavit, where he has stated that 116 posts of the fourth class employees are still lying vacant under the office of the respondent no.1 and this fact has been proved by the Advertisement published in the daily newspaper Amar Ujala dated 24.04.2005. Paragraph 10 of the Rejoinder Affidavit is quoted below:-

"10. That the contents of the para no. 11, 12, 13, & 14 of the counter affidavit are not admitted and vehemently denied. And the averment made in para no. 10. 11, 12, 13, 14, & 15 of the writ petition are reiterated a number of post of the fourth class employees are lying vacant under the office of the Respondent no. 1 it is apparent from the perusal of the advertisement published in the daily newspaper Amar Ujala dated 24.04.2005 in which it has been categorically mentioned that vacant pos of forth employees are more than 116."

Thus it is evident from the above fact that there were vacant posts in the respondent department and the petitioner, who had been working continuously for more than four years against a subsisting vacancy could not be terminated.

Learned counsel for the petitioner has submitted that the petitioner is a handicapped man of aged about 40 years and he has no other source of livelihood and he has come on the verge of starvation.

In view of the above observations, writ petition is allowed. The order dated 14.08.1995 passed by the respondents is set aside. The respondents are directed to reinstate the petitioner on the post on which, he was working and further to consider him for regularization in the service against the vacant Class IV post.

(Rajesh Tandon, J.)

Dated: 13.07.2005
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